

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DALE MORGAN,

Plaintiff,

Case No. 09-12140
Honorable Patrick J. Duggan

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

**OPINION AND ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, DENYING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, REVERSING
COMMISSIONER'S FINAL DECISION AND REMANDING MATTER TO THE
COMMISSIONER**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on September 7, 2010.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On June 3, 2009, Plaintiff filed this lawsuit challenging a final decision of the Commissioner denying Plaintiff's application for Disability and Disability Insurance Benefits. Plaintiff filed a motion for summary judgment on September 28, 2009. Defendant filed a motion for summary judgment on October 26, 2009. This Court had previously referred the matter to Magistrate Judge Michael Hluchaniuk for a report and recommendation pursuant to 28 U.S.C. §§ 636(b)(1)(B) and (C).

On August 13, 2010, Magistrate Judge Hluchaniuk filed his Report and

Recommendation (R&R) recommending that this Court grant in part and deny in part Plaintiff's motion and deny Defendant's motion. Magistrate Judge Hluchaniuk concludes that the Administrative Law Judge who rendered the Commissioner's final decision committed several significant flaws when he weighed and evaluated the treating physician evidence in Plaintiff's case. (R&R at 19.) Magistrate Judge Hluchaniuk therefore recommends that this Court reverse the Commissioner's decision and remand the matter for further consideration. (R&R at 25.)

At the conclusion of the R&R, Magistrate Judge Hluchaniuk advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (R&R at 25-26.) He further specifically advises the parties that "[f]ailure to file specific objections constitutes a waiver of any further right to appeal." (*Id.* (citing *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991).) Neither party filed objections to the R&R.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Hluchaniuk. Accordingly,

IT IS ORDERED, that Plaintiff's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**;

IT IS FURTHER ORDERED, that Defendant's motion for summary judgment is **DENIED**;

IT IS FURTHER ORDERED, that the Commissioner's decision is **REVERSED** and this matter is **REMANDED** to the Commissioner for further consideration consistent

with the R&R.

PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
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Magistrate Judge Michael Hluchaniuk